

REMARKS/ARGUMENTS

Pending claims 1-8, 13-24 and 35-36 stand rejected under 35 U.S.C. § 102(e) over U.S. Patent No. 6,760,771 (Giroir). Applicants respectfully traverse the rejection, and respectfully request reconsideration of the same.

As to claim 1, nowhere does Giroir teach a communication switch that includes an output to report a result of a comparison of a port specifier of a first message against port specifiers of previously received messages. In this regard, the Office Action contends that support for the recited comparison of port specifiers of one message to port specifiers of previously received messages is somehow present in either col. 7, ln. 24 – col. 8, ln. 43 or col. 10, lns. 13-65. However, neither of these locations teaches or suggests such a comparison. Instead, with regard to col. 7 - 8 all that Giroir teaches is that an IP datagram is analyzed and a device type is determined; nowhere does this portion teach a comparison based on port specifiers. As to col. 10 of Giroir further identified by the Office Action, all that this discloses is that a connection table includes source and destination addresses and ports. However, this nowhere teaches or suggests a comparison of a port specifier of a first message against port specifiers of previously received messages. Instead all this connection table does is store port and address information. Giroir, col. 10, lns. 13-16.

Giroir further fails to teach an output to report a result of the recited comparison. In this regard, the Office Action contends that transmission of an IP datagram from a dispatcher system 506 to a server 503 meets the claimed output. However, this transmission is merely forwarding of a data packet. This is not an output that reports a result of a comparison of a port specifier of a first message against port specifiers of previously received messages. For at least this reason, claim 1 and the claims depending therefrom are patentable over Giroir.

Dependent claim 2 is further patentable, as Giroir nowhere teaches a usage tracking system that throttles traffic to/from a device associated with a common address specifier and port specifier. This is so, as nowhere in Giroir, either in the cited portions or anywhere else, is there any teaching of throttling traffic based on a number of messages having common address and port specifiers. Instead, the cited portions merely describe routing of a message (i.e., a single message) based on various fields of the message -- not throttling based on a common address specifier and port specifier of traffic. Certainly, nowhere does Giroir teach the further subject

matter of dependent claim 3, which further recites that the throttling is based on the number of messages having such common address and port specifiers.

Still further, as to dependent claim 4, Giroir nowhere teaches throttling of traffic according to a predetermined maximum aggregate bandwidth for a communication switch that is received from a remote location. In this regard, the Office Action appears to contend that the predetermined maximum aggregate bandwidth is "using capacity of servers". Office Action, p. 3. To the extent that this contention is intelligible, it still does not meet the claimed subject matter of a predetermined maximum aggregate bandwidth for a communication switch that is received from a remote location. In this regard, any capacity of servers is irrelevant to a maximum aggregate bandwidth of a communication switch that is remote to such servers. Furthermore, as to dependent claim 5, there is no teaching or suggestion anywhere in Giroir of any reporting of fraud. There is simply no mention of fraud in Giroir or use of a traffic analyzer to report such a fraud. For this further reason, claim 5 is further patentable.

As to independent claim 13, Giroir nowhere teaches determining whether excessive traffic is originating from a source identified by a common address:port identifier of a first message and previously received messages via a comparison of address:port identifiers. Instead, Giroir merely teaches that a congestion control component 513 detects congestion and discards traffic if required according to a device type and priority criteria. Giroir, col. 8, lns. 20-23. Nowhere however does Giroir teach determining whether excessive traffic is originating from a source identified by a common address:port identifier of multiple messages. Accordingly, claim 13 and the claims depending therefrom are patentable over Giroir.

Further with regard to dependent claim 14, there is no disclosure in Giroir of throttling message traffic in response to a determination of excessive traffic originating from a source. This is so, since there is no determination of excessive traffic from a source made in Giroir (as described with respect to claim 13). Furthermore, there is no throttling of message traffic based on a source of excessive traffic origination. Instead, all that Giroir discloses is that when its system is congested, messages are discarded based on device type and transport priority. Giroir, col. 12, lns. 55-65. Nowhere does this anywhere teach throttling based on excessive traffic originating from a source. For this further reason, claims 14 and 15 are further patentable.

Independent claim 20 is patentable at least for the same reasons discussed above regarding claim 13. Furthermore, nowhere does Giroir teach a fraud reporter, and particularly

not such a reporter that reports excessive traffic from a common address identifier and port identifier combination of a communication device. Accordingly, claims 20 and 21 are patentable.

Independent claim 22 and its dependent claims are similarly patentable as Giroir nowhere teaches determining whether excessive traffic is going to/from an address:port combination (as described above with regard to claim 13), responsive to a comparison of address:port combinations of first and previously received messages (as described above with regard to claim 1). Accordingly these claims are patentable.

Dependent claims 23 and 24 are further patentable, at least for the same reasons discussed above regarding claims 14 and 5, respectively.

Pending claims 25-33 stand rejected under 35 U.S.C. § 103(a) over Giroir in view of U.S. Patent No. 6,657,956 (Sigaud). Applicants respectfully traverse the rejection, and respectfully request reconsideration of the same. Claims 25 and 26 are patentable at least for the same reasons discussed above regarding claim 22 from which they depend.

As to claim 27 neither reference teaches or suggests determining whether a device is performing masquerading based on a comparison of address and sub-address identifiers of a received message against one or more previously received messages. In this regard, the Office Action concedes that Giroir nowhere teaches or suggests such determining. Nor does Sigaud. Instead, Sigaud merely teaches that using a card reader and a security card provided by a user, it is possible to guard against stealing of IP addresses by an intruder to a network. However, Sigaud can only perform such guarding via use of a card reader. Nowhere does Sigaud in any way teach or suggest determining masquerading based on a comparison between address and sub-address identifiers of multiple messages.

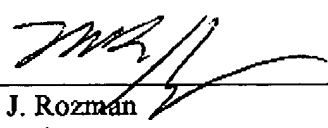
Furthermore, there is no suggestion or motivation to modify the references or to combine their teachings. That is, there is nothing in the references that suggests the desirability of the proposed combination. Accordingly, a *prima facie* case of obviousness has not been made. MPEP §2143.01. Instead, the Office Action merely states that it would have been obvious to incorporate Sigaud's teachings into Giroir because "it would have protected a stations' access to at least one server and provided selection access to the application requested from the server in a communications network." Office Action, p. 9. However nowhere does such protection have any bearing on claim 27 or the claims depending therefrom.

Nor is there any indication of how the references may be combined in order to obtain the claimed subject matter. As such, the proposed combination is nothing more than an improper hindsight-based reconstruction, which has been soundly rejected by the Federal Circuit. In order to prevent a hindsight-based obviousness analysis, the Federal Circuit requires that "to establish obviousness based on a combination of the elements disclosed in the prior art, there must be some motivation, suggestion or teaching of the desirability of making the specific combination that was made by the applicant." *In re Kotzab*, 55 U.S.P.Q.2d 1313, 1316-17 (Fed Cir. 2000). No such showing is present here. For this further reason, the rejection of claim 27 and the claims depending therefrom are overcome.

In view of these remarks, the application is now in condition for allowance and the Examiner's prompt action in accordance therewith is respectfully requested. The Commissioner is authorized to charge any additional fees or credit any overpayment to Deposit Account No. 20-1504.

Respectfully submitted,

Date: March 7, 2006


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